

IN THE MATTER OF
MARISOL JOHNSON
219 DELIGHT MEADOWS ROAD
REISTERSTOWN, MD 21136

RE: Citation Nos. E48839, E48840, and E57003

AHB Case No. DD4895

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-21-031

* * * * *

OPINION AND ORDER

This matter comes before the Baltimore County Board of Appeals as an on the record appeal from the May 4, 2021 order of the Animal Hearing Board finding that the Respondent, Marisol Johnson, failed to obtain a "Proper License" for her dogs in violation of Baltimore County Code ("BCC") §12-2-201, that the Respondent's dogs are "Menacing Animals" as described under 12-3-108(a)(2) of the BCC, and that the Respondent's dogs were allowed to be "At Large" as defined in §12-1-101(c)(1)(ii); and was in violation of §12-3-110 of the BCC. Two incidents were consolidated under Animal Hearing Board Case No. 4895: citations E48839A, E48839B, E48839C, E48840A, E48840B, E48840C, two counts "License Required," two counts "Menacing Animal," and two counts "Animal at Large" arising from a December 10, 2021 incident, and citations E570038A, E57003B, E57003C, one count of "Menacing Animal," "Animal at Large" and "License Required", respectively, occurring on November 6, 2020.

Oral arguments were heard before this Board via Webex on August 11, 2021. Respondent, Marisol Johnson appeared *pro se*. Assistant County Attorney, Marissa Merrick appeared on behalf of Baltimore County.

As this case comes before this Board as an on the record Appeal, no new evidence is presented. The Board, in connection with this matter, has appellate jurisdiction. BCC §32-4-281(e) authorizes the Board, in its appellate jurisdiction, to:

- (i) remand the case;
- (ii) affirm the decision; or
- (iii) reverse or modify the decision if the decision,
 - (a) exceeds the statutory authority or jurisdiction of the ALJ;
 - (b) results from an unlawful procedure;
 - (c) is affected by any other error of law;
 - (d) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (e) is arbitrary or capricious.

The Board does not make independent findings of fact or substitute its judgment for that of fact-finder below.

FACTS

Complainant, Jenny Ewing testified before the Animal Hearing Board regarding an attack on her dog, an 11 year-old, 100-pound dog with medical issues. Ms. Ewing stated that on December 10, 2020, she had taken her dog out for a walk. She described as she stood still, the Respondent's two dogs were suddenly present and started attacking her dog. Ms. Ewing stated that the Respondent's dogs bit her dog as she tried to pull the dogs away by the collar. Ms. Ewing further testified that she could not separate dogs, so she laid on top of her dog to shield them from Respondent's dogs.

Witness, Michael Grimm testified that he came outside and helped pull the dogs off. Mr. Grimm testified that at time of the incident he was inside his home and heard screaming. He stated he went outside and observed Ms. Ewing on top of her dog, shielding it from the attacking animals.

Respondent, Johnson testified that a dog walker was helping with her dogs on the day of December 10th. She stated that the dog walker was supposed to put the dogs in the basement after the walk was finished, but must have put the dogs on the back porch instead. She stated she does not allow her dogs roam freely. Johnson stated she paid the vet bills for the injured dog and apologized for the incident.

An incident preceding the December 10th incident allegedly occurred on November 6, 2020. The Affidavit of Complaint as to this incident was received by Animal Services on January 15, 2021. The facts of this complaint were testified to by Complainant, Diane Schwartzman. Ms. Schwartzman stated she noticed the Respondent's dog standing on a hill. She testified that the dog jumped on her with both paws, trying to get to her puppy. Ms. Schwartzman stated the dog bit her on her hand, but her coat protected her from injury. She described that the dog then ran off. Ms. Schwartzman testified that she knocked on the Respondent's door but was advised by a neighbor that no one was home. Ms. Schwartzman stated that she returned to the Respondent's home on the following Friday, but no one was home, thus she never got to communicate with the Respondent.

Respondent's Issues on Appeal

The main issues noted by the Respondent in her Notice of Appeal to this Board is that over her objection, the cases stemming from the December 10, 2020 and November 6, 2020 incidents were combined and heard on the same day and in the same hearing, thus prejudicing her ability to defend against the allegations separately. The Respondent argued before this Board that she objected to the consolidation of these matters, both prior to the day of the hearing and on the day of the hearing, itself. Respondent argues that the facts of the incident in the citations involving Ms. Schwartzman were far less clear-cut than that of the December 10th incident and the hearing of both incidents at the same time prohibited the Respondent from receiving an independent and impartial determination of the facts of each case. The County argued that such consolidation often takes place before the Animal Hearing Board in the furtherance of judicial economy.

It is clear in Maryland law that there is general evidentiary prohibition of using evidence of the commission of one crime to prove one's culpability in another. *See Maryland Rule 5-404(b)*. While cases before the Animal Hearing Board are not criminal in nature, a review of the Maryland

Rules in regards to the charging and combination of multiple offenses are informative in determining whether due process may be sacrificed in doing in cases such as the one at bar.

Maryland Rule 4-203 states:

- (a) Multiple offenses. Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

While the facts involved in the citations before the Board are similar in nature, they obviously did not arise out of the same transaction, nor has there been any evidence presented that they were part of some common scheme or plan. The Board is sympathetic to the need for judicial economy for the many matters coming before the Animal Hearing Board, but in this matter, it is clear that the Respondent enunciated her objection to the citations from separate incidents being heard at the same time. The Board finds in the unique factual circumstances of this matter, that the combination of the two incidents into one hearing was a violation of due process. A review of the record of the proceeding before the Animal Hearing Board reflects that the Respondent admitted many of the allegations of the December 10th incident and the Board cannot second guess the Animal Hearing Board's factual findings as to those citations. However, in the spirit of due process, this Board cannot sustain the Animal Hearing Board's findings as to the citations stemming from the November 6, 2020 incident, holding that the sustaining of those facts resulted from an unlawful procedure.

As conditioned in the Opinion of the Animal Hearing Board, this Board was informed that the Respondent has obtained licences for both of her dogs within the required 30 days from the prior decision. Consequently the \$300.00 in fines ordered in conjunction with violations of Baltimore County Code §12-2-201 are hereby waived.

This Board affirms the Animal Hearing Board's decision finding the Respondent in violation of two citations each of "Menacing Animal" and "Animals at Large," with a total fine of \$1,060.00 due to be paid by the Respondent.

ORDER

THEREFORE, IT IS THIS 4th day of January, 2022, by the Board of Appeals of Baltimore County, it is:

ORDERED that fines ordered by the Animal Hearing Board regarding citations E48839A, and E48840A, two counts "License Required," arising from a December 10, 2021 incident are **WAIVED**; and it is further

ORDERED that the Animal Hearing Board decision regarding citations E48839B, E48839C, E48840B, and E48840C, two counts "Menacing Animal," and two counts "Animal at Large" arising from a December 10, 2021 incident are **AFFIRMED**; and it is further

ORDERED that the Animal Hearing Board decision regarding citations E570038A E57003B, E57003C, one count of "Menacing Animal," "Animal at Large" and "License Required", respectively, occurring on November 6, 2020 is **REVERSED**; and it is further

ORDERED that the total civil penalty assessed is hereby modified to \$1,060.00.

In the matter of: Marisol Johnson
Case No: CBA-21-031

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Deborah C. Dopkin, Chair

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Andrew M. Belt

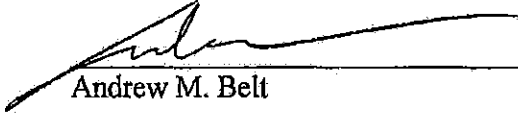
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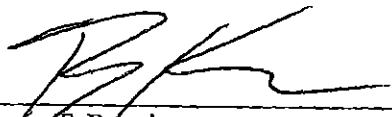
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Board of Appeals of Baltimore County

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January 4, 2022

Marissa L. Merrick, Assistant County Attorney
Assistant County Attorney
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Towson, Maryland 21204

Marisol Johnson
219 Delight Meadows Road
Reisterstown, Maryland 21136

RE: In the Matter of: *Marisol Johnson*
Case No: CBA-21-031

Dear Ms. Merrick and Ms. Johnson:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, reading "Sunny Cannington Hay".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Jenny Ewing
Diane Schwartzman
Bernard J. Smith, Chairman/AHB
Briana Sofia, Office Coordinator/Animal Services Division
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law